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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

Crim. No. S-05-167 DFL

12 vs.

13 JOSEPH McELROY,

14 Defendant.

ORDER

15 _____/
16 This matter was on calendar on October 31, 2006, for defendant Joseph
17 McElroy's motion for discovery. Daniel J. Broderick, Federal Defender, appeared for Mr.
18 McElroy, who was present; Kenneth J. Melikian appeared for the government. The defense
19 seeks certain categories of discovery; the government seeks reciprocal discovery.

20 A. Mirror Images Of Hard Drives

21 The government will locate the power source necessary to copy the hard drives,
22 which has been provided by the Federal Defender's Office to the FBI, and ensure that mirror
23 images are created.

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1 B. Expert Witnesses

2 The government will provide a written summary of any expert testimony as
3 described in Federal Rule of Criminal Procedure 16(a)(1)(G) one week before trial confirmation
4 hearing.

5 C. Brady Material

6 1. Information from Scotland Yard, the RCMP, and International Commercial
7 Bank

8 The court will not order the government to obtain material from the
9 Taiwanese branch of the International Commercial Bank of China, Scotland Yard, or the Royal
10 Canadian Mounted Police regarding this case or other Nigerian scams as described in the
11 discovery motion. United States v. Tadros, 310 F.3d 999, 1005 (7th Cir. 2002) (Brady does not
12 require the government to gather information on the defendant's behalf); United States v. Velte,
13 331 F.3d 673, 680 (9th Cir. 2003) (no Brady obligation to provide humidity report in this arson
14 case because it was produced by a weather station not acting on the government's behalf).

15 However, to the extent any of the material has made its way to the files of the FBI in
16 Washington D.C., the material is covered by Brady v. Maryland, 373 U.S. 83 (1963), and should
17 be provided in sufficient time for the defense to make use of it. See United States v. Gamez-
18 Orduno, 235 F.3d 453, 461 (9th Cir. 2000). The court credits Mr. Melikian's willingness to
19 attempt to secure any exculpatory materials from foreign law enforcement and from the
20 Taiwanese bank.

21 2. Information About The Third Check

22 The government will obtain this information and provide it to the defense.

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1 3. Background Material

2 The defense seeks the material about Nigerian scams upon which a spokesperson
3 for the FBI relied in speaking to the Wall Street Journal for that paper's series on such frauds.
4 Mr. Melikian will determine whether any such material exists and provide any exculpatory
5 material to the defense.

6 D. Henthorn¹ Request

7 Mr. Melikian will undertake the review of personnel files of federal government
8 agents who will be witnesses in sufficient time to secure any in camera review and then provide
9 the impeachment material, if any, to the defense one week before trial.

10 E. 404 (b) Material

11 The government will provide this material one week before trial confirmation.

12 F. Reciprocal Discovery

13 The defense will provide reciprocal discovery to the government as contemplated
14 by Federal Rule of Criminal Procedure 16(b).

15 IT IS SO ORDERED.

16 DATED: November 16, 2006.

17 
18 U.S. MAGISTRATE JUDGE

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20 mcelroy.dsc

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¹ United States v. Henthorn, 931 F.2d 29 (9th Cir. 1990).